

2009

Blake D. Coombs v. Brett A. Dietrich : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

BLAKE D. COOMBS,

Petitioner and Appellee,

vs.

BRETT A. DIETRICH,

Respondent and Appellant.

BRIEF OF APPELLEE

APPELLATE CASE NO.: 20090924 - CA

Appeal from an Order from the Honorable Micael G. Allphin entering a permanent Stalking
Injunction entered on September 22, 2009, and a written order thereafter on April 16, 2010.

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**FILED
UTAH APPELLATE COURTS**

AUG 17 2010

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1. Abernathy v. Mzik, 167 P.3d 512, 515 (Utah Ct.App. 2007);
2. Ellison v. Stam, 136 P.3d 1242 (Utah Ct.App. 2006);
3. Salt Lake City v. Lopez, 935 P.2d 1259, 1264 (Utah Ct.App. 1997);

STATUTES

1. Utah Code Annotated §77-3a-101;
2. Utah Code Annotated §76-5-106.5.

JURISDICTION

The Appellant properly states jurisdiction lies with this Court pursuant to U.C.A. §78A-4-103 (2)(j).

ISSUES

The Appellant correctly identifies the issues before this Court, consequently, the Appellee does not choose to further define the issue.

DETERMINATIVE STATUTES AND RULES

Utah Code Annotated §77-3a-101

Utah Code Annotated §76-5-106.5

STATEMENT OF THE CASE

The Appellee does not disagree with the Appellant's statement of the Case.

RELEVANT FACTS

1. The first incident took place on December 6, 2008 at a Dairy Queen when the parties met for a Court appointed meeting. Appeal Record, P. 81 - 82. Mr. Dietrich brought the meeting to an abrupt halt. Appeal Record, P. 83: L. 10 - 19.

2. Later, during the first incident, as the parties' were getting into their cars Mr. Dietrich called Mr. Coombs a "porno king" in the presence of Mr. Coombs's minor child. Appeal Record, P. 84: L.4 - 7.

3. Mr. Coombs specifically testified that being called a "porno king" was upsetting to him, and that he wanted to say something to Mr. Dietrich. Appeal Record, P. 84: L. 8 - 15; P. 85: L. 11 - 15.

4. Approximately one week after the Dairy Queen event Mr. Coombs went to the

marital home to retrieve his personal property. Appeal Record, P. 86: L. 12 - 23.

5. While picking up his personal property Mr. Coombs was escorted by the Davis County Sheriff's department given his fear that there was going to be an incident with Mr. Dietrich. Appeal Record, P. 86: L. 23 - 25; P. 87: L. 1 - 2.

6. Mr. Coombs had his father and brother-in-law with him while attempting to pick up his personal property. Appeal Record, P. 87: L. 3 - 12.

7. When Mr. Coombs attempted to retrieve his property, Mr. Dietrich began to call him names, and again called Mr. Coombs a "porno king." Appeal Record, P. 89: L. 12 - 19.

8. Mr. Coombs testified that he was annoyed, felt insulted, was distracted and that he did his best to ignore Mr. Dietrich. Appeal Record, P. 89: L. 6 - 12; P. 90: L. 2 - 4.

9. On May 22, 2009 when Mr. Coombs went to the marital home to retrieve his children, and further, to charge a battery, and place a registration in his son's car, he was accosted by Mr. Dietrich. Appeal Record, P. 91: L. 7 - 22; P. 92: L. 8 - 16; P. 92: 18 - 22.

10. While attempting to place the registration, and charge the battery of Mr. Coombs's son's car, Mr. Dietrich took the keys to the car, and the registration in an attempt to thwart the efforts of Mr. Coombs. Appeal Record, P. 92: L. 23 - 25; P. 93: L. 15 - 18.

11. On May 22, 2009 Mr. Dietrich pushed Mr. Coombs against his son's car, and slammed Mr. Coombs arm in the car door. Appeal Record, P. 93: L. 1 - 7.

SUMMARY OF THE ARGUMENT

Mr. Coombs properly established, and the Court justifiably found a course of events wherein Mr. Coombs was the victim of either significant emotional distress or fear for his safety. Emotional distress results from “outrageous and intolerable” behavior that offends “generally accepted standards of decency and morality.” Salt Lake City v. Lopez, 935 P.2d 1259, 1264 (Utah Ct.App. 1997). These events were perpetrated by Mr. Dietrich, and he does not attempt to deny his actions, but rather attempts to argue to the Court that his actions should not have resulted in Mr. Coombs feeling significant emotional distress.

When examining the totality of circumstances it is clear that the course of events that Mr. Coombs complains of could lead a reasonable person to be emotionally distressed and/or physically threatened.

ARGUMENT

I. The District Court Properly Found there were a Course of Events of Stalking Behaviors.

To find that a stalking injunction should enter, a court must conclude that an individual intentionally or knowingly caused another individual to fear for their safety, or caused an individual emotional distress. Utah Code Annotated §77-3a-101 and §76-5-106.5. Further, the court must conclude that the perpetrator of the offensive behavior acted in such a way more than once. Utah Code Annotated §76-5-106.5(b).

The District properly concluded that Mr. Dietrich engaged in three events of inappropriate behavior, and consequently there was a course of conduct.

II. The Three Events Are a Course of Conduct.

A. FIRST EVENT

The first incident took place on December 6, 2008 at a Dairy Queen when the parties when the parties met for a Court appointed meeting. Appeal Record, P. 81 - 82. Mr. Dietrich brought the meeting to an abrupt halt after Mrs. Dietrich turned to him, causing him to indicate the meeting was over and they were leaving. Appeal Record, P. 83: L. 10 - 19.

Later, during the same episode, as the parties' were getting into their cars Mr. Dietrich called Mr. Coombs a "porno king" in the presence of Mr. Coombs minor child. Appeal Record, P. 84: L. 4 - 7.

Mr. Coombs specifically testified that this was upsetting to him, and that he wanted to say something to Mr. Dietrich. Appeal Record, P. 84: L. 8 - 15; P. 85: L. 11 - 15.

The District Court properly recognized the significant emotional distress that would be caused by an adult calling a father a porno king in the presence of his daughter. Any reasonable individual would be horrified by such a comment being made in a public place in the presence of their child.

Pornography is a great taboo among society, and to have someone call you the king thereof would be horrifying on its' face, let alone in the presence of your minor child. This certainly rises to level of outrageous behavior that offends the accepted standards of decency.

Furthermore, the District Court properly recognized the emotional distress that would accompany a court ordered meeting being abruptly ended by a third party. When the Court orders a party to accomplish something, and a party fails to accomplish the task, the violation is punishable by contempt, which is punishable with remedies as severe as jail time. Mr. Dietrich

abruptly interrupted the Court ordered meeting causing the Respondent to have distress concerning the non-compliance with the Court's order.

It is uncontroverted in Mr. Dietrich's brief that these events took place. Mr. Dietrich instead attempts to argue that the actions he perpetrated at the Dairy Queen should not have resulted in emotional distress. After reviewing the evidence concerning the first incident, it is clear that Mr. Dietrich caused Mr. Coombs to be significantly emotionally distressed, as would most under similar circumstances.

B. SECOND EVENT

Approximately one week after the Dairy Queen event Mr. Coombs went to the marital home to retrieve his personal property. Appeal Record, P. 86: L. 12 - 23. Mr. Coombs was escorted by the Davis County Sheriff's department given his fear that there was going to be an incident with Mr. Dietrich. Appeal Record, P. 86: L. 23 - 25; P. 87: L. 1-2. Mr. Coombs had his father and brother-in-law with him on this occasion. Appeal Record, P. 87: L. 3 - 12.

When Mr. Coombs attempted to retrieve his property, Mr. Dietrich began to call him names, and again called Mr. Coombs a "porno king." Appeal Record, P. 89: L. 12 - 19.

Mr. Coombs testified that he was annoyed, felt insulted, was distracted and that he did his best to ignore Mr. Dietrich. Appeal Record, P. 89: L. 6 - 12; P. 90: L. 2 - 4.

The Court has held, "...[I]n cases involving civil stalking injunctions, we look at the totality of the circumstances in evaluating whether or not certain behavior caused the requisite emotional distress or fear of bodily injury." Abernathy v. Mzik, 167 P.3d 512, 515 (UT Ct.App. 2007) (Citing Ellison v. Stam, 2006 UT App 150, ¶ 27, 136 P.3d 1242)).

Again given the taboo nature of pornography, the previous incident at Dairy Queen

wherein Mr. Dietrich called Mr. Coombs the “porno king”, the presence of Mr. Coombs’s family members, and further, given a deputy sheriff was present to keep the peace, Mr. Coombs obviously was distressed.

The totality of the above circumstances should lead a reasonable person to conclude that Mr. Dietrich’s behavior violates acceptable standards of decency. Put another way it is indecent to repeatedly call someone a “porno king” in the presences of one’s family. Certainly the second event where this took place would be an escalation of the problems between the parties.

Therefore, the District Court, when examining the totality of the circumstances, properly concluded that the Mr. Dietrich engaged in a second escalating event wherein her cause Mr. Coombs to feel significant emotional distress.

C. **THIRD EVENT**

On May 22, 2009 when Mr. Coombs went to the marital home to retrieve his children, and further, to charge a battery, and place a registration in his son’s car, he was accosted by Mr. Dietrich. Appeal Record, P. 91: L. 7 - 22; P. 92: L. 8 - 16; P. 92: L. 18 - 22.

The testimony demonstrated that Mr. Dietrich took the keys to the car, and the registration in an attempt to thwart the efforts of Mr. Coombs. Appeal Record, P. 92: L. 23 - 25; P. 93: L. 15 - 18. The altercation eventually lead to the parties physically fighting. Mr. Dietrich pushed Mr. Coombs against his son’s car, and slammed Mr. Coombs’s arm in the car door. Appeal Record, P. 93: L. 1 - 7.

Mr. Coombs clearly had a reason to fear for his safety. Mr. Coombs escalated events to the level of a physical altercation. Mr. Dietrich does not deny that this would have lead to one fearing for their physical safety, but argues that this is only one event, and therefore, fails to

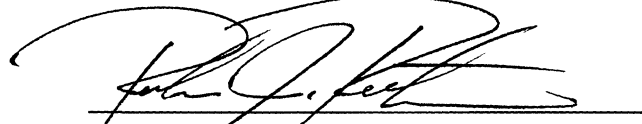
demonstrate a course of conduct. For the arguments more fully stated above, this would make the third event, and properly led the District Court to find there was a course of conduct.

CONCLUSION

Therefore, the District Court had a legally sufficient basis to enter the stalking injunction based upon Its' Finding of Fact. Consequently, the Appellant's Appeal should be dismissed, and attorney's fees should be grant for having to defend the appeal.

DATED this 16th day of August, 2010.

HELGESEN, WATERFALL & JONES

A handwritten signature in black ink, appearing to read 'Reuben J. Renstrom', is written over a horizontal line.

REUBEN J. RENSTROM

Attorney for Blake D. Coombs, Appellee

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Brief of Appellee via U.S. Mail, postage prepaid to:

DANIEL S. Drage
Attorney for Appellant
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Dated on this 17th day of August, 2010.

A handwritten signature in cursive script, appearing to read "Paul J. Keefe", is written over a horizontal line.

ADDENDUM - 1

Utah Statutes

- ☐ **Utah Statutes**
- ☐ **TITLE 77 UTAH CODE OF CRIMINAL PROCEDURE**
- ☐ **CHAPTER 3a STALKING INJUNCTIONS**

77-3a-101. Civil stalking injunction — Petition — Ex parte injunction.

(1) As used in this chapter, "stalking" means the crime of stalking as defined in Section **76-5-106.5**. Stalking injunctions may not be obtained against law enforcement officers, governmental investigators, or licensed private investigators, acting in their official capacity.

(2) Any person who believes that he or she is the victim of stalking may file a verified written petition for a civil stalking injunction against the alleged stalker with the district court in the district in which the petitioner or respondent resides or in which any of the events occurred. A minor with his or her parent or guardian may file a petition on his or her own behalf, or a parent, guardian, or custodian may file a petition on the minor's behalf.

(3) The Administrative Office of the Courts shall develop and adopt uniform forms for petitions, ex parte civil stalking injunctions, civil stalking injunctions, service and any other necessary forms in accordance with the provisions of this chapter on or before July 1, 2001. The office shall provide the forms to the clerk of each district court.

(a) All petitions, injunctions, ex parte injunctions, and any other necessary forms shall be issued in the form adopted by the Administrative Office of the Courts.

(b) The offices of the court clerk shall provide the forms to persons seeking to proceed under this chapter.

(4) The petition for a civil stalking injunction shall include:

(a) the name of the petitioner; however, the petitioner's address shall be disclosed to the court for purposes of service, but, on request of the petitioner, the address may not be listed on the petition, and shall be protected and maintained in a separate document or automated database, not subject to release, disclosure, or any form of public access except as ordered by the court for good cause shown;

(b) the name and address, if known, of the respondent;

(c) specific events and dates of the actions constituting the alleged stalking;

(d) if there is a prior court order concerning the same conduct, the name of the court in which the order was rendered; and

(e) corroborating evidence of stalking, which may be in the form of a police report, affidavit, record, statement, item, letter, or any other evidence which tends to prove the allegation of stalking.

(5) If the court determines that there is reason to believe that an offense of stalking has occurred, an ex parte civil stalking injunction may be issued by the court that includes any of the following:

(a) respondent may be enjoined from committing stalking;

(b) respondent may be restrained from coming near the residence, place of employment, or school of the other party or specifically designated locations or persons;

(c) respondent may be restrained from contacting, directly or indirectly, the other party, including personal, written or telephone contact with the other party, the other party's employers, employees, fellow workers or others with whom communication would be likely to cause annoyance or alarm to the other party; or

(d) any other relief necessary or convenient for the protection of the petitioner and other specifically designated persons under the circumstances.

(6) Within 10 days of service of the ex parte civil stalking injunction, the respondent is entitled to request, in writing, an evidentiary hearing on the civil stalking injunction.

(a) A hearing requested by the respondent shall be held within 10 days from the date the request is filed with the court unless the court finds compelling reasons to continue the hearing. The hearing shall then be held at the earliest possible time. The burden is on the petitioner to show by a preponderance of the evidence that stalking of the petitioner by the respondent has occurred.

(b) An ex parte civil stalking injunction issued under this section shall state on its face:

(1) that the respondent is entitled to a hearing, upon written request within 10 days of the service of the order;

(11) the name and address of the district court where the request may be filed;

(111) that if the respondent fails to request a hearing within 10 days of service, the ex parte civil stalking injunction is automatically modified to a civil stalking injunction without further notice to the respondent and that the civil stalking injunction expires three years after service of the ex parte civil stalking injunction; and

(1v) that if the respondent requests, in writing, a hearing after the ten-day period after service, the court shall set a hearing within a reasonable time from the date requested.

(7) At the hearing, the court may modify, revoke, or continue the injunction. The burden is on the petitioner to show by a preponderance of the evidence that stalking of the petitioner by the respondent has occurred.

(8) The ex parte civil stalking injunction and civil stalking injunction shall include the following statement: "Attention. This is an official court order. If you disobey this order, the court may find you in contempt. You may also be arrested and prosecuted for the crime of stalking and any other crime you may have committed in disobeying this order."

(9) The ex parte civil stalking injunction shall be served on the respondent within 90 days from the date it is signed. An ex parte civil stalking injunction is effective upon service. If no hearing is requested in writing by the respondent within 10 days of service of the ex parte civil stalking injunction, the ex parte civil stalking injunction

automatically becomes a civil stalking injunction without further notice to the respondent and expires three years from the date of service of the ex parte civil stalking injunction.

(10) If the respondent requests a hearing after the ten-day period after service, the court shall set a hearing within a reasonable time from the date requested. At the hearing, the burden is on the respondent to show good cause why the civil stalking injunction should be dissolved or modified.

(11) Within 24 hours after the affidavit or acceptance of service has been returned, excluding weekends and holidays, the clerk of the court from which the ex parte civil stalking injunction was issued shall enter a copy of the ex parte civil stalking injunction and proof of service or acceptance of service in the statewide network for warrants or a similar system.

(a) The effectiveness of an ex parte civil stalking injunction or civil stalking injunction shall not depend upon its entry in the statewide system and, for enforcement purposes, a certified copy of an ex parte civil stalking injunction or civil stalking injunction is presumed to be a valid existing order of the court for a period of three years from the date of service of the ex parte civil stalking injunction on the respondent.

(b) Any changes or modifications of the ex parte civil stalking injunction are effective upon service on the respondent. The original ex parte civil stalking injunction continues in effect until service of the changed or modified civil stalking injunction on the respondent.

(12) Within 24 hours after the affidavit or acceptance of service has been returned, excluding weekends and holidays, the clerk of the court shall enter a copy of the changed or modified civil stalking injunction and proof of service or acceptance of service in the statewide network for warrants or a similar system.

(13) The ex parte civil stalking injunction or civil stalking injunction may be dissolved at any time upon application of the petitioner to the court which granted it.

(14) The court clerk shall provide, without charge, to the petitioner one certified copy of the injunction issued by the court and one certified copy of the proof of service of the injunction on the respondent. Charges may be imposed by the clerk's office for any additional copies, certified or not certified in accordance with Rule 4-202.08 of the Code of Judicial Administration.

(15) The remedies provided in this chapter for enforcement of the orders of the court are in addition to any other civil and criminal remedies available. The district court shall hear and decide all matters arising pursuant to this section.

(16) After a hearing with notice to the affected party, the court may enter an order requiring any party to pay the costs of the action, including reasonable attorney fees.

(17) This chapter does not apply to protective orders or ex parte protective orders issued pursuant to Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, or to preliminary injunctions issued pursuant to an action for dissolution of marriage or legal separation.

ADDENDUM - 2

Utah Statutes

- ☐ **Utah Statutes**
- ☐ **TITLE 76 UTAH CRIMINAL CODE**
- ☐ **CHAPTER 5 OFFENSES AGAINST THE PERSON**
- ☐ **PART 1 ASSAULT AND RELATED OFFENSES**

76-5-106.5. Stalking – Definitions – Injunction – Penalties.

(1) As used in this section:

(a) "Conviction" means:

(i) a verdict or conviction;

(ii) a plea of guilty or guilty and mentally ill;

(iii) a plea of no contest; or

(iv) the acceptance by the court of a plea in abeyance.

(b) "Course of conduct" means two or more acts directed at or toward a specific person, including:

(i) acts in which the actor follows, monitors, observes, photographs, surveils, threatens, or communicates to or about a person, or interferes with a person's property:

(A) directly, indirectly, or through any third party; and

(B) by any action, method, device, or means; or

(ii) when the actor engages in any of the following acts or causes someone else to engage in any of these acts:

(A) approaches or confronts a person;

(B) appears at the person's workplace or contacts the person's employer or coworkers;

(C) appears at a person's residence or contacts a person's neighbors, or enters property owned, leased, or occupied by a person;

(D) sends material by any means to the person or for the purpose of obtaining or disseminating information about or communicating with the person to a member of the person's family or household, employer, coworker, friend, or associate of the person;

(E) places an object on or delivers an object to property owned, leased, or occupied by a person, or to the person's place of employment with the intent that the object be delivered to the person; or

(F) uses a computer, the Internet, text messaging, or any other electronic means to commit an act that is a part of the course of conduct.

(c) "Immediate family" means a spouse, parent, child, sibling, or any other person who regularly resides in the household or who regularly resided in the household within the prior six months.

(d) "Emotional distress" means significant mental or psychological suffering, whether or not medical or other professional treatment or counseling is required.

(e) "Reasonable person" means a reasonable person in the victim's circumstances.

(f) "Stalking" means an offense as described in Subsection (2) or (3).

(g) "Text messaging" means a communication in the form of electronic text or one or more electronic images sent by the actor from a telephone or computer to another person's telephone or computer by addressing the communication to the recipient's telephone number.

(2) A person is guilty of stalking who intentionally or knowingly engages in a course of conduct directed at a specific person and knows or should know that the course of conduct would cause a reasonable person:

(a) to fear for the person's own safety or the safety of a third person;
or

(b) to suffer other emotional distress.

(3) A person is guilty of stalking who intentionally or knowingly violates:

(a) a stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions; or

(b) a permanent criminal stalking injunction issued pursuant to this section.

(4) In any prosecution under this section, it is not a defense that the actor:

(a) was not given actual notice that the course of conduct was unwanted;
or

(b) did not intend to cause the victim fear or other emotional distress.

(5) An offense of stalking may be prosecuted under this section in any jurisdiction where one or more of the acts that is part of the course of conduct was initiated or caused an effect on the victim.

(6) Stalking is a class A misdemeanor:

(a) upon the offender's first violation of Subsection (2); or

(b) if the offender violated a stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions.

(7) Stalking is a third degree felony if the offender:

(a) has been previously convicted of an offense of stalking;

(b) has been previously convicted in another jurisdiction of an offense that is substantially similar to the offense of stalking;

(c) has been previously convicted of any felony offense in Utah or of any crime in another jurisdiction which if committed in Utah would be a felony, in which the victim of the stalking offense or a member of the victim's immediate family was also a victim of the previous felony offense;

(d) violated a permanent criminal stalking injunction issued pursuant to Subsection (9); or

(e) has been or is at the time of the offense a cohabitant, as defined in Section **78B-7-102**, of the victim.

(8) Stalking is a second degree felony if the offender:

(a) used a dangerous weapon as defined in Section **76-1-601** or used other means or force likely to produce death or serious bodily injury, in the commission of the crime of stalking;

(b) has been previously convicted two or more times of the offense of stalking;

(c) has been convicted two or more times in another jurisdiction or jurisdictions of offenses that are substantially similar to the offense of stalking;

(d) has been convicted two or more times, in any combination, of offenses under Subsection (7)(a), (b), or (c);

(e) has been previously convicted two or more times of felony offenses in Utah or of crimes in another jurisdiction or jurisdictions which, if committed in Utah, would be felonies, in which the victim of the stalking was also a victim of the previous felony offenses; or

(f) has been previously convicted of an offense under Subsection (7)(d), (e), or (f).

(9)(a) A conviction for stalking or a plea accepted by the court and held in abeyance for a period of time serves as an application for a permanent criminal stalking injunction limiting the contact between the defendant and the victim.

(b) A permanent criminal stalking injunction shall be issued by the court without a hearing unless the defendant requests a hearing at the time of the conviction. The court shall give the defendant notice of the right to request a hearing.

(c) If the defendant requests a hearing under Subsection (9)(b), it shall be held at the time of the conviction unless the victim requests otherwise, or for good cause.

(d) If the conviction was entered in a justice court, a certified copy of the judgment and conviction or a certified copy of the court's order holding the plea in abeyance must be filed by the victim in the district court as an application and request for a hearing for a permanent criminal stalking injunction.

(10) A permanent criminal stalking injunction may grant the following relief:

(a) an order:

(i) restraining the defendant from entering the residence, property, school, or place of employment of the victim; and

(ii) requiring the defendant to stay away from the victim and members of the victim's immediate family or household and to stay away from any specified place that is named in the order and is frequented regularly by the victim; and

(b) an order restraining the defendant from making contact with or regarding the victim, including an order forbidding the defendant from personally or through an agent initiating any communication likely to cause annoyance or alarm to the victim, including personal, written, or telephone contact with or regarding the victim, with the victim's employers, employees, coworkers, friends, associates, or others with whom communication would be likely to cause annoyance or alarm to the victim.

(11) A permanent criminal stalking injunction may be dissolved or dismissed only upon application of the victim to the court which granted the injunction.

(12) Notice of permanent criminal stalking injunctions issued pursuant to this section shall be sent by the court to the statewide warrants network or similar system.

(13) A permanent criminal stalking injunction issued pursuant to this section has effect statewide.

(14) (a) Violation of an injunction issued pursuant to this section constitutes a third degree felony offense of stalking under Subsection

(b) Violations may be enforced in a civil action initiated by the stalking victim, a criminal action initiated by a prosecuting attorney, or both.

(15) This section does not preclude the filing of a criminal information for stalking based on the same act which is the basis for the violation of the stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions, or a permanent criminal stalking injunction.